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MCLE SELF-STUDY

Working with Land Trusts on Conservation Easement Transactions

*By Michele M. Clark**

Conservation easements are increasingly being used in California to permanently protect land from development. Land trusts are nonprofit organizations formed to hold conservation easements. This article describes conservation easements and provides information on selecting and working with a land trust to successfully complete a conservation easement transaction.

A. DEFINITION OF CONSERVATION EASEMENT.

A conservation easement is a "limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land." California Civil Code §815.1. The purpose of a conservation easement is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. California Civil Code §815.1.

A conservation easement is a voluntarily created interest in real property transferred by the property owner to the recipient by gift, bargain sale, sale, or other lawful means. California Civil Code §815.2. The agreement between the landowner and the holder is recorded in the office of county recorder where the land is located. Once recorded, the agreement becomes a permanent restriction on the title to the property. The conservation easement is perpetual in duration. California Civil Code §815.2, §815.5

After a conservation easement agreement is signed and recorded, the owner continues to own fee title to the land and retains all rights of ownership that are not transferred or restricted by the terms of the easement, including the right to engage in all uses of the land not affected or prohibited by the easement or otherwise by law. California Civil Code §815.4. The owner may sell, gift or otherwise transfer the land; however, the conservation easement remains in place and the new owner or heir is bound by the terms of the easement, including all restrictions on use.

Conservation easements are negative in character—the agreement restricts or prohibits certain activities identified in the agreement (e.g., residential or commercial development). California Civil Code §815.2. The landowner retains all responsibilities inherent in the ownership of land, including the payment of real estate taxes, because land subject to a conservation easement remains on the county tax rolls. Public access is not required.

B. HOLDERS OF CONSERVATION EASEMENTS IN CALIFORNIA.

The California Civil Code defines the entities or organizations that may acquire and hold conservation easements:

(1) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code which is qualified to do business in California and which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use. California Civil Code §815.3

(2) California or any city, county, city and county, district, or other California

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or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. California Civil Code §815.3

No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement. California Civil Code §815.3. An easement created under this condition is commonly referred to as an "open space easement" and is governed by California Government Code Sections 51070-51097.

C. SELECTING A LAND TRUST.

Nonprofit organizations established to hold conservation easements are commonly referred to as "land trusts." There are nearly 200 land trusts operating in California, and based on a 2003 survey conducted by the Land Trust Alliance, a national organization of land trusts, 298,472 acres of land in California are permanently protected by conservation easements. See 2003 Land Trust Alliance Consensus at www.lta.org/census /census_tables.htm. California land trusts recently joined together to form the California Council of Land Trusts. See www.calandtrusts.org.

1. Mission Statement. The first step in selecting a land trust is to confirm that the primary purpose of the land trust is the "preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use." California Civil Code §815.3. The mission statement of the land trust will provide this information. See Land Trust Alliance Standards and Practices, Standard 1 at http://www.lta.org. In addition, the work of the land trust must be consistent with the purpose of the conservation easement. For example, a land trust established to protect land in its natural condition would not be appropriate for holding a conservation easement over farmland. An easement restricting forested land should be held by a land trust whose mission and experience is the protection of forests. A land trust may also have a limited geographic area in which it will work. For example, the mission of the Bolsa Chica Land Trust is limited to the 1700 acres of the mesa, lowlands and wetlands of the Bolsa Chica, an area along the coast near Huntington Beach, California.

2. Publicly Supported Organization. The second step is to confirm the land trust is a publicly supported organization. A recent trend in the field of conservation easements has been the emergence of "rogue" or "designer" or "captive land trusts." These groups claim to be a land trust but are in reality an organization set up by a developer for the purpose of holding the developer's mitigation easements. Publicly supported land trusts are concerned rogue land trusts will undermine the credibility of legitimate land trusts by ignoring conservation easement violations and allowing the landowner to terminate the easement in the future when land values have increased and public attention on the protection of the property is diminished.

A publicly supported organization is one that receives a substantial part of its support from direct and indirect contributions from the general public and governmental bodies. Treas. Regs. §1.170A-9(e)(1). The method many land trusts employ to demonstrate they receive a substantial part of their support from the general public and governmental bodies is commonly referred to as the "substantial support" test. The land trust must receive a substantial part of its support (not including income received in the performance of the organization's exempt functions) from governmental units and contributions from the general public. The land trust can satisfy the test if the total amount of contributions from the general public and support from governmental units normally equals at least 33 1/3 percent of the organization's total support for a period of four consecutive years. Treas. Regs. §1.170A-9(e)(4).

Alternatively, the land trust may still qualify as a publicly supported organization under the "facts and circumstances" test, wherein at least 10% of the land trust's support is from the general public and governmental units, and the organization is organized and operated so as to attract new and additional public or governmental support on a continual basis. Treas. Regs. §1.170A-9(e)(3)(i) and (ii). A land trust that maintains a continuous and bona fide program for solicitation of funds from the general public or community will generally meet this requirement.

To avoid working with a rogue land trust, the selected land trust should be required to demonstrate it is a publicly supported organization. A review of the land trust's federal tax return, IRS Form 990, Schedule A, will provide this information. A copy of IRS Form 990 must be made available for public inspection during regular business hours at the principal office of the organization. Another option is to examine the list of factors the Internal Revenue Service considers when examining whether the "facts and circumstances" test can be met. Treas. Regs. § 1.170A-9(e)(3). They are as follows:

a. The percentage of public support received by the organization.

b. The sources of the organization's support.

c. The constitution of the organization's governing body.

d. The provision for public facilities or services by the organization.

e. The degree of public participation in the organization's programs or policies.

Although no one of the foregoing factors is dispositive, of particular relevance to the issue of discovering whether the selected land trust is a "real" land trust or is one controlled by the developer, is the third factor listed above. The selected land trust should have a governing body that represents the broad interests of the public rather than personal or private interests of a limited number of donors (or persons standing in a relationship to such donors). Treas. Reg.§1.170A-9(e)(3)(v).

3. Local Presence and Unique Knowledge. The last step in selecting a land trust is to consider whether a local land trust is available to hold the easement. Most California land trusts are locally based, with members of the local community serving as members of the Board of Directors and/or as active volunteers of the annual monitoring teams. This local presence builds a strong relationship with the owner of the property and helps prevent easement violations.

Conservation easements require the owner of the property to notify the holder when the land is transferred. On many occasions, however, this does not occur. Another advantage of having a local land trust hold the easement is that members of the local community will usually know when title to a property is transferred and will alert land trust staff to call on the new owner to begin to establish the much-needed working relationship.

Many land trusts are also a good resource for strategic planning purposes. A land trust may have prepared maps of properties with important natural resources. A land trust often knows which owners are willing to consider entering into a conservation easement transaction. The local land trust will act as an important liaison between a governmental entity and a reluctant or suspicious landowner during the transaction planning and escrow period. In addition, the

land trust has experience in completing conservation easement transactions, a process that can take several years if any public or private funding is used.

Land trusts can also be a source of current scientific information relating to conservation issues. For example, a project ecologist with a national conservation organization conducted vernal pool research and discovered livestock grazing of wetlands can help reduce the cover of invasive non-native species and thus benefit vernal pool systems. See Jaymee Marty, Vernal Pools are at Home on the Range, The Environmental Law Institute, Vol. 26, No 4, July-August 2004.

D. TRANSACTION COSTS.

Most land trusts do not have a continuous stream of revenue to pay transaction costs. The median annual budget of land trusts reporting a budget in the 2003 Land Trust Alliance census was $36,500, and many land trusts are run primarily by volunteers. Patrick Coady, Accelerating the Pace of Open Space conservation, Exchange, The National Journal of Land Conservation, Vol.24, No.1, Winter 2005. The land trust will need to be reimbursed for project consultants, attorney fees and closing costs, in addition to the monitoring and easement defense costs described below. Transaction costs will also include escrow and recording fees, and a responsible land trust will obtain a title insurance policy insuring the land trust's ownership of the conservation easement is free and clear of any prior liens or encumbrances.

E. MONITORING RESPONSIBILITIES.

The primary responsibility of the holder of a conservation easement is to ensure the terms of the conservation easement are not violated. A conservation easement agreement must permit representatives of the land trust access to the protected land on an annual basis to observe the condition of the land and to determine whether any changes have occurred since the easement was recorded or since the last annual monitoring visit. During the monitoring visit, land trust representatives compare the then-current condition of the land to the condition of the land at the time the easement was signed.

To establish the condition of the property at the time the easement is created, a baseline conditions report is prepared. The report is an assessment of the existing improvements on the land as well as the natural resources and, if appropriate, agricultural values of the property. For example, the report will identify the existing houses and other structures, roads, fences, wildlife resources, historic features, agricultural facilities, water sources and tree species, and contain maps, photographs and aerial photos. Each report is tailored to each property and to the conservation values to be protected by the conservation easement.

The report is used to guide the annual monitoring of the property. It will also serve as documentary evidence if a dispute arises as to changes in the use of the land that may be prohibited by the terms of the easement. See Melissa K. Thompson, The Legal Efficacy of New Technologies in the Enforcement and Defense of Conservation Easements, Exchange, The National Journal of Land Conservation, Vol.23, No. 3, Summer 2004.

As a general rule, the land trust is responsible for the preparation of the baseline conditions report, although the landowner may be asked to fund the cost of preparation. A land trust may prepare the baseline report using staff and volunteers by taking photographs and providing narratives to describe the property. For more complex easements, a consultant or group of consultants will be engaged to document species, topography, soil conditions, precipitation patterns and vegetation. Biologists with the Natural Resources Conservation Service of the USDA are willing to assist in the preparation of baseline reports. Upon completion of the preparation of the baseline report, the land trust and the landowner each acknowledge the report sets forth the current condition of the property, either by language in the conservation easement agreement or by separate certification.

Most land trusts do not record baseline reports for a variety of reasons. On a large property with multiple resource values, the baseline report will include many photographs and maps with detailed biological and other scientific data, making recording too expensive or impossible due to the format of the data. In addition, a landowner may object to recording the report because it contains confidential economic information about a property such as the number of cattle raised or specifics on the crops grown on the land. Many owners are also reluctant for security reasons to provide detailed information about their property to the general public.

A responsible land trust will develop a monitoring policy for the annual monitoring of all the conservation easement properties in the land trust's portfolio. The monitoring protocol or checklist defined by the terms of the easement and the baseline conditions report is used during the annual visit to the land. A monitoring report is prepared after the annual visit and is retained by the land trust. These annual reports serve as documentary evidence the land trust is conducting monitoring, and how well the owner of the land is complying with the terms of the easement.

Land trusts collect funds at closing to pay for the annual monitoring of the easement. These funds are placed in a nonwasting endowment fund, with the land trust using the annual interest generated to pay costs to monitor the easement. Funding the monitoring endowment is an important consideration for the land trust. A responsible land trust will avoid accepting any easement for which there is no monitoring fund. Some land trusts use the Property Analysis Record developed by the Center for Natural Lands Management to budget the annual costs and endowment needed to support monitoring. See www.cnlm.org

F. ENFORCING A CONSERVATION EASEMENT.

The land trust has the right to sue an owner who violates the restrictions imposed by the conservation easement. The owner may be required to restore the land to the condition required under the easement. California courts can prohibit, enjoin, or restrain actual or threatened injury to or impairment of a conservation easement, or actual or threatened violation of the terms. California Civil Code §815.7 The land trust is entitled to recover money damages for any injury to the easement or to the interest protected by the easement or for violation of the terms. California Civil Code §815.7

Most land trusts collect funds at closing to endow an easement defense fund. How much is collected varies from land trust to land trust. Land trusts work hard, however, to avoid tapping their easement defense funds by maintaining a relationship with each landowner. An early indication discovered during the annual monitoring visit that a problem exists can be resolved with the landowner prior to the matter escalating into a violation for which judicial relief may be required.

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MCLE SELF-ASSESSMENT TEST

1. A conservation easement is a limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land.

❑ True ❑ False

2. The purpose of a conservation easement is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.

❑ True ❑ False

3. A conservation easement is a voluntarily created interest in real property transferred by the property owner to the recipient by gift, bargain sale, sale, or other lawful means.

❑ True ❑ False

4. The agreement between the landowner and the holder is recorded in the office of the California Secretary of State.

❑ True ❑ False

5. The conservation easement expires after 30 years.

❑ True ❑ False

6. After a conservation easement agreement is signed and recorded, the owner continues to own fee title to the land and retains all rights of ownership that are not transferred or restricted by the terms of the easement.

❑ True ❑ False

7. The owner may sell, gift or otherwise transfer the land; however, the conservation easement remains in place and the new owner or heir is bound by the terms of the easement, including all restrictions on use.

❑ True ❑ False

8. Conservation easements are positive in character—the agreement allows certain activities identified in the agreement (e.g., residential or commercial development).

❑ True ❑ False

9. The landowner retains all responsibilities inherent in the ownership of land, including the payment of real estate taxes.

❑ True ❑ False

10. Public access is not required for a conservation easement to be valid.

❑ True ❑ False

11. A. local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement.

❑ True ❑ False

12. Nonprofit organizations established to hold conservation easements are commonly referred to as "land trusts."

❑ True ❑ False

13. The work of the land trust is not required to be consistent with the purpose of the conservation easement.

❑ True ❑ False

14. A publicly supported organization is one that receives a substantial part of its support from direct and indirect contributions from the general public and governmental bodies.

❑ True ❑ False

15. A copy of a land trust's federal tax return must be made available for public inspection during regular business hours at the principal office of the organization.

❑ True ❑ False

16. Conservation easements require the owner of the property to notify the holder when the land is transferred.

❑ True ❑ False

17. Most land trusts have a continuous stream of revenue to pay transaction costs.

❑ True ❑ False

18. The primary responsibility of the holder of a conservation easement is to ensure the terms of the conservation easement are not violated.

❑ True ❑ False

19. To establish the condition of the property at the time the easement is created, a baseline conditions report is prepared—an assessment of the existing improvements on the land as well as the natural resources and, if appropriate, agricultural values of the property.

❑ True ❑ False

20. The land trust has the right to sue an owner who violates the restrictions imposed by the conservation easement.

❑ True ❑ False

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AB 1825: New Law Requires Training on the Prohibition and Prevention of Sexual Harassment

*By David A. Garcia**

One way employers inform employees about the laws prohibiting sexual harassment in the workplace is by hanging posters and handing out information sheets. Employers, however, can no longer get by with simply distributing information about the laws on sexual harassment, at least not with respect to supervisors. New state law, enacted on September 30, 2004, now requires a much more active approach, interactive in fact. Specified employers now will have to train and educate supervisors on the federal and state sexual harassment laws. This article provides an overview of the requirements of the new law, to whom it applies, ways to comply with the law, and the possible consequences of not providing the required training.

CURRENT REQUIREMENTS

Existing law requires that employers inform employees about the law prohibiting sexual harassment in the workplace. California Government Code section 12950(a) of the Fair Employment and Housing Act (FEHA) already requires employers to place a sexual harassment poster "in a prominent and accessible location in the workplace." The Department of Fair Employment and Housing (DFEH) distributes this poster to employers upon request. Similarly, Section 12950(b) also requires that employers obtain the DFEH information sheet on sexual harassment, to pass out to employees. Alternatively, an employer may create its own information sheet, which at minimum should contain the following: information about the illegality of sexual harassment; the definition of sexual harassment under applicable state and federal law; a description of sexual harassment, using examples; the internal complaint process of the employer available to the employee; the legal remedies and complaint process available through the state, and information on how to contact a local DFEH office; and a description of the protection against retaliation for opposing any discrimination or harassment or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by the DFEH or the Fair Employment Housing Commission (FEHC). Cal. Gov't Code § 12950(b).

APPLICABILITY OF AB 1825

AB 1825, effective January 1, 2005 and codified at Government Code section 12950.1, requires that employers with 50 or more employees provide training to "supervisory employees," as detailed by the statute. An employer subject to the Act is also any entity that "regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities." Specifically, AB 1825 also specifies that the State shall incorporate the required sexual harassment training into "the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4 of the Government Code, using existing resources." Cal. Gov. Code § 12950.1(b). For purposes of AB 1825, temporary service employees and independent contractors are also counted as employees.

Who is a "supervisory employee" required to be trained? Although not defined by AB 1825, Government Code section 12926(r) provides that a "supervisor" is "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment." This new law, then, seems to apply to employees beyond those that have the formal title of *Mr. or Ms. Supervisor*, depending on the employee's duties. For example, a "shop lead" or a working foreman may be considered a "supervisory employee" under AB 1825, if he or she has authority to recommend disciplinary action against an employee. Therefore, while the new law does not apply to non-supervisory employees, employers should examine the duties of all persons who are in charge of other employees, regardless of title, to determine who should receive the training.

TRAINING REQUIRED

Can the required training be conducted internally, by an experienced human resources director? Or, do covered employers have to hire an outside expert, such as an experienced attorney, to conduct the training? The law is not clear.

According to Section 12950.1, the required training must include at least two hours of information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against, and the prevention of, sexual harassment, as well as the remedies available to victims of sexual harassment in the workplace. The training must include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and it must be conducted by "trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation."

Some employers have previously trained employees by showing videos or distributing company or government handouts that discuss the prohibition against workplace sexual harassment. However, the new law states that employers must provide "classroom or other effective *interactive* training." Cal. Gov't Code § 12950.1(a) (italics added). Therefore, it is unlikely that, for example, showing a sexual harassment training video or conducting training via the internet, by itself, would comply fully with this new law with respect to supervisors.

How often must the training be conducted for the "supervisory employees"? Employers with 50 or more employees must conduct at least two hours of training after January 1, 2006, every two years. An employer has until January 1, 2006, to train all supervisors employed as of July 1, 2005; for those supervisors who were hired or promoted after that date, the employer has six months to train the supervisor. Supervisory employees who received training sometime after January 1, 2003, will not need to be retrained by January 1, 2006, but must receive future bi-annual training.

LEGAL EFFECTS

What will happen to employers who do not provide the required training? Under existing federal law, the United States Supreme Court held that, in certain contexts, if an employer can demonstrate that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior" and that the employee failed to take advantage of those preventive or corrective opportunities, then it can establish an affirmative defense to avoid liability. *Burlington Indus. v. Ellerth*, 524 U.S. 742, 765 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998). Under California law, however, an employer cannot use that same defense in the same manner as under federal law. But an employer can reduce damages if it can show, among other things, that it took reasonable steps to prevent the harassment. *State Dept. of Health Servs. v. Super. Ct.*, 31 Cal. 4th 1026, 1044 (2003).

AB 1825 does not expressly change the existing standards for determining the liability of an employer for sexual harassment. In fact, it specifies that employers who fail to provide the required training will not be liable for alleged sexual harassment solely because the alleged harasser was not properly trained. Although, AB 1825 also provides that the FEHC can order an employer to provide the required training. Cal. Gov. Code § 12950.1(e). On the other hand, "an employer's compliance with [AB 1825] does not insulate the employer from liability for sexual harassment of any current or former employee or applicant." Cal. Gov. Code § 12950.1(d).

Nevertheless, someone who sues an employer claiming unlawful sexual harassment, where no or even insufficient training was provided to the supervisory employees, may be expected to argue that the employer should have to pay punitive damages, for its reckless disregard of the law. For example, California Government Code section 12940(k) of the FEHA requires employers to "take all reasonable steps necessary to prevent discrimination and harassment from occurring." Failing to train supervisors as required by AB 1825 will likely be evidence that the defendant employer did not take the prevention of sexual harassment seriously. Moreover, an employer who does not provide the required training could expose itself to the charge that it "failed to prevent" unlawful sexual harassment, which is an independent claim available to a victim of sexual harassment, under Section 12940(k). Therefore, whether an employer in fact adhered to or disregarded AB 1825 will likely come to be significant evidence in sexual harassment cases.

CONCLUSION

AB 1825 encourages employers to provide sexual harassment training that meets or exceeds the minimum standards set forth in this new law. It states that these requirements "should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination." Cal. Gov. Code § 12950.1(f). For whatever level or form of education provided, employers should carefully document who attends the required sexual harassment training. In doing so, an employer can better demonstrate its efforts to provide the information necessary to have a workplace free of unlawful harassment and discrimination.

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Land Use Regulation Under the ADA and Related Laws

By Arthur J. Lettenmaier*

The Americans with Disabilities Act of 1990 ("ADA") served to highlight the need for avoiding discrimination against persons with disabilities. Such discrimination can take many forms, including the failure to remove barriers to access, or the failure to provide accommodations when reasonably necessary to afford access to government facilities, programs, and services.

The ADA was preceded by other state and federal laws that also prohibit discrimination against disabled persons, including the Fair Housing Act which was passed into law in 1968. This article discusses these various laws and their application to land use and related decisions by local government agencies. In addition, recommendations are provided as to policies and procedures to minimize exposure to claims of discrimination by persons with disabilities.

A. KEY CONCEPTS

The following are important concepts encompassed in both the State and federal regulatory schemes:

Fundamental Alteration (of Programs or Services). A modification of programs or services that alters the essential nature of a provider's operations. (Joint Statement of the Department of Housing and Urban Development and the Department of Justice, regarding Reasonable Accommodations Under the Fair Housing Act, issued May 17, 2004 (hereinafter "Joint Statement")).

Major Life Activity. A life activity is considered to be major if it is of central importance to daily life. Examples include seeing, hearing, walking, breathing, caring for one's self, learning, and speaking, but this list is not exhaustive. *See, e.g. Bragdon v. Abbott* (1998) 524 U.S. 624, 691-92 (holding that reproduction can be a major life activity). (Joint Statement). Unlike State law, it is unclear under federal law whether "working" is a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams* (2002) 122 S. Ct. 681, 692-93.

In addition to the categories referenced in the federal law, California law includes additional specifically defined categories of activities that are considered to be "major," including social activities and working. Cal. Gov Code §§ 12926(k)(1) and 12926.1.

Person with a Disability. Under federal law, a person is considered to have a disability if: (a) they have a physical or mental impairment that substantially limits one or more major life activities; (b) they are regarded as having such an impairment; or (c) they have a record of such impairment. (Joint Statement).

The law of the State of California is more detailed and generally more inclusive as to the scope of persons considered to have a disability. For example, "cosmetic disfigurement" is specifically included in the definition of physical disability. Cal. Gov. Code §12926(k). In addition, State law does **not** require that the limitation imposed by the disability be substantial. *See, e.g.* Cal. Gov. Code §12926(k).

Physical or Mental Impairment. This term includes diseases and conditions such as orthopedic, visual, speech, hearing, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, mental retardation, emotional illness, drug addiction (unless caused by current illegal use of a controlled substance), and alcoholism. (Joint Statement).

California statutes include diseases and conditions such as those referenced under federal law, but further include prospective disabilities. *See, e.g.* Cal. Gov. Code §12926(k), (providing that being regarded as having a condition that could result in future disability is sufficient). *See also* Cal. Gov. Code §12926(h), (providing that an inherited characteristic such as a predisposition to develop a disabling disease, even though not currently present, constitutes a disability).

Reasonable Accommodation. Any modification or adjustment that will enable an individual with a disability to participate in government programs, activities and services but that does not impose undue financial and administrative burdens on the local government or require a fundamental alteration in the nature of its services, programs, or facilities.

Substantially Limits. Under federal law, a limitation is substantial when the limitation caused by the disability is "significant" or "to a large degree." (Joint Statement). As stated previously, there is no comparable requirement under State law that limitations imposed by disabilities be "substantial."

B. SCOPE OF PERSONS PROTECTED

The determination as to whether a person is entitled to protection under the law is not simple. There is no procedure that can quickly and easily be used to determine whether a particular person qualifies for protection. The decision must be made on a case by case basis.

Moreover, care must be taken in the decision process and communication is a key element. Some persons have disabilities that are apparent, for example a person whose legs have been amputated. In other cases, a disability may not be readily apparent, such as a person with HIV. A governmental entity is entitled to collect information as is reasonably necessary to make a determination regarding the necessity of a requested accommodation. However, the entity can not place unnecessary restrictions on the nature and the source of the information. For example, a medical doctor may be able to substantiate the necessity of a requested accommodation, but then again, a full-time caregiver may also have this capacity. Applicants for accommodations must be given flexibility to provide information from all reasonably appropriate sources. (Joint Statement). In addition, the nature of accommodations required by persons with disabilities can vary widely.

Some persons, although possessing disabilities as defined under the law, are not entitled to protection. Examples include:

(1) Disorders involving psychoactive substances resulting from current abuse of controlled substances;

(2) Juvenile offenders;

(3) Sexual behavior disorders;

(4) Compulsive gambling;

(5) Kleptomania; and

(6) Pyromania.

(Cal. Gov. Code §§ 12926(i)(5) and 12926(k)(6). Joint Report. 42 U.S.C. §3602(h). *United States v. Southern Management Corp.* (4th Cir. 1992) 955 F.2d 914, 919

(clarifying that protection not afforded to current drug abusers)).

Federal law also does not afford protection to individuals whose behavioral tendencies would constitute a "direct threat" to the health or safety of others, unless that risk can be mitigated by reasonable measures. The determination as to whether a person's behavior constituted a direct threat must be made based on reliable objective evidence. (Joint Report).

C. FEDERAL DISABILITY DISCRIMINATION LAWS

There are several federal laws that are potentially applicable to land use decisions by local government agencies:

(1) The Fair Housing Act ("FHA"), Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619;

(2) The Federal Rehabilitation Act of 1973 ("FRA"), 29 U.S.C. §794; and

(3) The Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12101 *et seq.*

1. Fair Housing Act

The FHA prohibits discrimination in housing-related transactions. Disability[1] is among the specifically enumerated categories where discrimination is prohibited. (42 U.S.C. §3604(f)(3)(B)). It imposes an affirmative duty on local governments to make reasonable accommodations in rules, policies, practices, or services when necessary to afford "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. §3604(f)(3)(B)). Such accommodations may involve variances, conditional use permits, and other zoning and land use issues. Because it is so broad, the FHA impacts the processes and policies in providing, accepting, and evaluating applications and inquiries regarding reasonable accommodations.

Accommodation requests are "reasonable" so long as they do not impose undue financial and administrative burdens on the local government or require a fundamental alteration in the nature of its services. This determination is factually intensive as to what constitutes an "undue" financial or administrative burden or a "fundamental" alteration in services or regulations.

Persons with disabilities have seen significant gains in the courts over the years. For example, when the ADA was first passed into law, cost was a substantial factor in evaluating whether an accommodation was reasonable. Over time, the view of the courts has shifted towards a more literal reading of the law, and significant expense is less of a concern. The issue is not whether there is expense, but whether the expense is excessively burdensome. Many factors go into this analysis, including whether there are less expensive alternative accommodations, the nature and necessity of the service or program, and the degree of need of the disabled person.

A simple illustration is as follows. A person owns a home with stairs leading to the front door entrance. Said person becomes mobility impaired and now needs to use a ramp to access his or her front door. The disabled person applies for a variance to install a ramp from the exterior landing to the property boundary. The ramp is considered a structure and would ordinarily be prohibited because of the minimum setback. The governmental agency might respond that allowing the ramp to extend all the way to the property boundary constitutes a fundamental change in its zoning scheme. As an alternative, it might propose that the ramp be constructed with an intermediate landing and a 90 degree turn to avoid constructing the ramp all the way to the property line. The applicant may oppose this configuration due to increased expense.

In these facts, the cost and administrative burden to the governmental entity are nominal. Under the law, the court's primary consideration would be whether allowing the ramp to extend to the boundary actually constituted a fundamental change in the applicable regulations. Nonetheless, the court could also consider the availability of other entrances (examining the necessity of the accommodation), as well as the cost and utility of the proposed alternative configuration. However, it must be remembered that the regulating body is under an affirmative duty to provide an accommodation, and generally, close calls are going to be made in favor of disabled applicants.

2. Federal Rehabilitation Act of 1973

The FRA was passed into law in 1973 and last amended in 1998. It has more stringent requirements regarding the provision of accommodations to disabled persons. For example, it may require that a governmental entity provide and pay for reasonable accommodations that involve structural improvements to units or public and common areas. The FRA is triggered when a local government entity receives federal funds.

3. The ADA

The ADA is the "big dog" of anti-discrimination legislation. Title II of the ADA ("Title II"), 42 U.S.C. §12131 *et seq.*) applies to all public entities. (42 U.S.C. §12131(1)). It is implemented by 28 C.F.R. Part 35. Under Title II, all public entities are required to:

(1) have completed a self-evaluation of services, policies, and practices by July 26, 1992. (28 C.F.R. §35.105);

(2) notify all applicants, participants, beneficiaries, and other interested persons of their rights and the obligations of the local government. (28 C.F.R. §35.106);

(3) designate a responsible employee to coordinate efforts of the local government to comply with the ADA. (28 C.F.R. §35.107(a));

(4) establish a grievance procedure for resolving complaints of violations under Title II. (28 C.F.R. §35.107(b));

(5) operate every program, service, and activity in a fashion that, when viewed in its entirety, is readily accessible and usable by persons with disabilities. (28 C.F.R. §150); and

(6) assure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. (28 C.F.R. §35.160).

It has been more than 13 years since these regulations went into effect, but compliance is still not universal.

D. FEDERAL ENFORCEMENT

The United States Department of Justice ("DOJ"), is the primary federal agency charged with assuring compliance with the ADA and related federal laws. The DOJ is authorized to determine compliance of public entities and to negotiate and secure voluntary compliance. (28 C.F.R. Part 35, Subpart F). The DOJ is also authorized to bring civil action when it is unable to obtain voluntary compliance. (24 U.S.C. §12133).

Likewise, the DOJ is authorized to determine compliance of public entities under the FRA, or absent same, to suspend or terminate financial assistance or bring a civil action. (29 U.S.C. §794, 28 C.F.R. §§ 42.350 and 42.108-110).

The key word is "voluntary." The law encourages voluntary compliance by public entities. Typically, the DOJ will open an examination after receipt of one or more complaints. In responding to the DOJ, it is recommended that the local public agency be open and responsive. This will typically serve to avoid litigation and more stringent enforcement activities.

Aggrieved persons are also entitled to bring actions under Title II. Presently, some local jurisdictions in the State have joined in an effort to reduce exposure to future litigation by requiring notice and an opportunity to cure alleged deficiencies prior to the filing of litigation.

E. STATE COMPLIANCE ACTIONS

The following State laws are potentially applicable to accommodation requests of persons with disabilities:

(1) Fair Employment and Housing Act, Cal. Gov. Code §12926 *et seq.*;

(2) Unruh Civil Rights Act, Cal. Civ. Code §51 *et seq.*; and

(3) Disabled Persons Act, Cal. Civ. Code §54 *et seq.*

Further, any violation of the ADA constitutes a violation of State law. (Cal. Civ. Code §§ 51, 54, and 54.1).

City Attorneys and District Attorneys have discretionary authority to bring actions for the enforcement of state law violations of the ADA. (Cal. Civ. Code §§ 52 and 55.1). Aggrieved private individuals can also bring actions to obtain compliance with State law.

If faced with litigation for failure to comply with these State laws (or the incorporated federal law), local jurisdictions may expect that a copy of the letter issued by the State Attorney General on May 15, 2001 will be an exhibit. In this letter, all California Mayors were reminded of the affirmative duty to make reasonable accommodations in zoning and other land use regulations and practices. The letter also references a similar appeal from the DOJ issued August 18, 1999, regarding compliance with the FHA.

The letter of May 15, 2001 suggests that local jurisdictions institute policies and procedures to "adopt a procedure for handling [reasonable accommodation] requests and to make its availability known within [the] community." This is sound advice, but many jurisdictions still lack formal procedures.

Another potential exhibit in litigation is the letter issued by the State Attorney General on December 23, 2002. In this letter, government attorneys in the State are asked to be proactive in seeking compliance with applicable anti-discrimination laws. While neither of these letters obligates a local jurisdiction to act in a particular fashion, receipt of the letters and the lack of any subsequent action to investigate or improve enforcement and compliance may not go over well with a jury.

F. ADDRESSING THE RISK

Discrimination lawsuits can result in very substantial exposure. Plaintiffs can recover damages and attorneys' fees. Hourly rates for awards of attorneys' fees can be quite high, and fact intensive matters can justify substantial volumes of work. Rather than face this exposure, local jurisdictions are well advised to act proactively to reduce the risk of litigation and the potential exposure therein.

The simplest and easiest approach for minimizing exposure for claims of failure to provide reasonable accommodations is to provide a detailed procedure for acknowledging and processing such requests. In accomplishing same, several factors should be considered:

(1) The application procedure itself should be flexible. Qualified applicants may not be able to read a form, or write or type. Jurisdictions should therefore be prepared to offer assistance as may be reasonably necessary to make an application.

(2) The availability of the procedure should be made widely known. This can be accomplished by press releases, by making mention of the availability of the procedure at public meetings, and by the prominent display of signage at entrances and service counters.

(3) The procedure should offer the applicant an opportunity to provide all information as may be reasonably necessary to evaluate an application. When an application is received, time should be allowed to evaluate the application and make a determination as to whether sufficient information has been provided to evaluate the need for the accommodation. If the application is deficient, the applicant should be informed in writing as to the areas where additional information is required.

(4) The application procedure should be offered without charge lest the jurisdiction be accused of discrimination. Otherwise, disabled persons are faced with paying a fee to obtain access to services and programs that are accessible by able-bodied persons without a fee.

(5) An appeal process should be provided to assure that applicants are afforded a full and fair opportunity to be heard.

(6) The decision process should also be flexible. With respect to a particular accommodation request, the answer need not be "yes" or "no." It could also be an offer to accept an alternative accommodation (as in the example discussed above regarding a ramp to access an elevated front door).

G. CONCLUSION

As our population ages, we may expect that the number and variety of requests for accommodations to all types of government programs will expand. The plaintiffs' bar has become much more active in this field. Less than five years ago, there were only a few active full-time litigation firms handling claims of disabled persons. That number has grown steadily, as has the number of lawsuits filed. Jurisdictions that lack specific polices and procedures for handling requests for reasonable accommodations are therefore strongly encouraged to consider adopting same as a means of mitigating future exposure and towards compliance with the ADA.

ENDNOTES

1. The FHA uses the word "handicap" in place of "disability." These terms are synonymous. *See Bragdon v. Abbott* (1998) 524 U.S. 624, 631 (noting that the ADA's definition of disability is nearly identical to the FHA's definition of handicap).

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Teaming Up with Paralegals to Deliver Legal Services to the Municipal Client

By Stacey Hunt, C.L.A., C.A.S. and Michael R. Jencks, Esq.***

As cities strive to control legal costs in this era of belt-tightening, demands on city attorneys are growing in number and complexity. Many contract and in-house city attorneys are looking to a solution already realized in corporate legal departments and law firms—the increased utilization of paralegals. Available at lower salaries and billing rates than attorneys, paralegals are being delegated higher-level job responsibilities, reflecting their heightened educational requirements, the availability of advanced specialty certification, and required continuing legal education.[1] Public law offices that are expanding their paralegal utilization are reporting significant gains in the efficient delivery of legal services. This increased efficiency is most often expressed in terms of increased workload capacity and faster turn around times on assignments.

In the past twenty-five years the use of paralegals has evolved from early controversy, and even opposition by some bar organizations, to widespread acceptance. U.S. Supreme Court Justice William Brennan observed in 1989 that:

> [p]aralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate. Such work might include, for example, factual investigation, including locating and interviewing witnesses; assistance with depositions, interrogatories, and document production; compilation of statistical and financial data; checking legal citations and drafting correspondence. Much of this work lies in a grey area of tasks that either an attorney or a paralegal might appropriately perform.[2]

Paralegals met their earliest acceptance in litigation and litigation today remains the area in which the greatest number of paralegals work.[3] This is true with respect to the use of paralegals by cities and their outside counsel where the use of paralegals for litigation is now common and the contribution of paralegals to the cost-effective prosecution and defense of litigation on behalf of cities is widely acknowledged.

Current practices in well-managed city attorney offices, and law firms serving as contract city attorneys, suggest that an increasing number of cities are employing paralegals in-house, or requesting contract counsel to delegate additional tasks as practicable to paralegals, and to work not just on traditional litigation tasks but on the performance of the core general counsel functions inherent in the office of city attorney.

In this article, we will discuss:

- How the hiring and creative utilization of paralegals can contribute to the efficient delivery of general counsel services to the municipal client
- The types of tasks that are assigned to paralegals in city attorney offices and law firms that practice municipal law
- Issues in creating a paralegal program in your city, including ethics issues and compliance with Business & Professions Code §6450 *et seq.*
- Suggestions on how to locate and hire a qualified paralegal.

I. EFFICIENCIES REALIZED THROUGH INCORPORATING PARALEGALS

City attorneys have long recognized that use of paralegals can save cities money, at least in the litigation context.[4] Cities now recognize that similar gains in efficiency can be realized when paralegals are used to assist attorneys in providing general counsel services to cities. In her paper "Methods for Increasing Efficiency Using Paralegals" presented at the League of California Cities' May, 1997 City Attorney Department Meeting, Mona Krane, a paralegal with Richards, Watson & Gershon, specifically addresses the use of paralegals in connection with contract city attorney services and provided an early itemization of the kinds of tasks paralegals might be delegated in furtherance of the general counsel role of the city attorney.

Krane identified a number of ways her firm uses paralegals to save attorney time, including communication with city staff, drafting staff reports for council meetings, preparing legal documents, responding to public record requests, drafting of documents, and tracking litigation by maintaining a litigation log. Krane concluded that "paralegal assistance...offers cost savings opportunities to the client, efficiency to the office, and timesavings to the attorney...."[5]

For attorneys in a busy city hall environment, there should be some consideration as to how much time is spent meeting with city staff, gathering information, working with contractors or consultants, gathering data from other agencies, responding to routine matters, interfacing with outside counsel and tracking litigation. Many of these tasks could be easily delegated to paralegals, freeing up time for more complicated and substantive matters. Taking this one step further, a person who (1) has the legal training and skills that a paralegal possesses, and (2) is familiar with the city's procedures and filing systems, can act as the perfect liaison between staff and the office of the city attorney. The increased efficiency will reflect well on the city attorney's office and have an overall positive impact on the cost of legal services for the city.

Gary Gillig, City Attorney for the City of Oxnard, is enthusiastic about the city's paralegal program.[6] "Our paralegals are very qualified," he says. "There is a great deal of work that a properly educated and trained paralegal can perform," says Gillig, "such as processing of routine agreements, reviewing permits, bonds and insurance policies. It really frees up my time for more complicated matters."

City managers bemoan the fact that one consequence of holding steady, or even reducing, city attorney budgets is that it comes at a time when the very issues dealing with cash shortages (*e.g.* the push to review and update assessments and fees more frequently, the importance of maximizing return on local taxes, the incentive to outsource or franchise municipal services, liquidation of surplus properties, and assessment enforcement)

require more intensive legal advice. Greg Priamos, City Attorney for the City of Riverside, describes the value of his office's paralegals in terms of helping the office increase its productivity by raising the number of assignments completed, by facilitating the prompt turnover of those assignments, and, to a lesser degree, in freeing up attorneys to address other outstanding assignments.

Michael Colantuono, whose firm Colantuono & Levin serves as contract city attorney to a number of cities and represents many others as special counsel, associates the increased use of paralegals on the general counsel tasks with a wider phenomenon of municipal law offices needing to be smaller, more nimble, and less hierarchical to efficiently compete and serve the needs of cash-starved cities for quality legal counsel.

Two other areas where use of paralegals have resulted in cost effective benefits are (1) code and administrative enforcement activities, many of which had been pulled from direct city attorney oversight to save expense and re-delegated to others, typically to planning or to a police-oriented code enforcement; and (2) document management tasks. Paralegals operating under the supervision of the city attorney provide a favorable cost benefit balance to enable the city to bring such programs back under the purview of the City Attorney.

II. PARALEGAL TASKS FROM A TO Z

Across the state, attorneys have used paralegals in a variety of creative ways to handle the myriad tasks faced by cities every day.

The Fresno City Attorney's office assigns one paralegal to each of its three units. Michael P. Slater, Assistant City Attorney, states that the five-attorney litigation unit has one paralegal, who performs traditional civil litigation tasks. The civil advisory unit, which handles contract work, police legal advice, code enforcement, land use and conflicts, also has one paralegal, who is trained to review contracts, and prepare resolutions and ordinances. "We have used a paralegal to represent the City in administrative hearings on code enforcement matters," says Slater.

Delaina Finch, a paralegal in the Oxnard City Attorney's Office, began her career performing typical municipal paralegal duties. "I drafted agreements, prepared reports for the City Council, drafted resolutions and ordinances, prepared and processed unlawful detainers for the Housing Authority, and prepared oppositions to *Pitchess* motions." Over the years, however, Finch's duties grew to such an extent that she has now reached the position of Law Office Manager for the Oxnard City Attorney's Office. Her responsibilities are numerous and include overseeing the processing of public liability claims, acting as the project manager for a city-wide electronic document imaging project, organizing a committee to prepare a City Purchasing Manual, and helping develop and manage the City Attorney Debt Collection Program.

Lynn Sleeper, a senior paralegal at the Sacramento office of McDonough, Holland & Allen, has worked in the firm's Redevelopment Section for almost 20 years. She performs a large amount of high-level transactional work, including drafting development agreements, participation agreements, purchase and sale agreements, deeds, notes and financing documents. Because the firm's attorneys are often on the road traveling to agency offices, Sleeper has a large amount of client contact. "I act as a conduit of information between the attorneys and our city clients," says Sleeper, "which helps improve efficiency."

Municipal Advocates Group, LLP, which serves as contract city attorneys for a number of small and medium sized cities, has used a paralegal to perform a variety of tasks for its clients, such as:

- Reviewing Public Records Act requests and drafting responses, assisting staff in gathering responsive documents, determining whether exemptions exist, supervising the redaction of privileged materials, and monitoring large inspections;
- Preparing draft responses to audit letters;
- Creating a database of all pending city contracts and providing training to city staff in its use; and
- Assisting in training of city council, planning commission and other boards and committees on Brown Act and Public Records Act matters.

III. STARTING A PARALEGAL PROGRAM IN YOUR AGENCY

A. How to Locate and Hire a Qualified Paralegal

Up until 2001, the terms "paralegal" and "legal assistant" were rather loose titles, which could be conferred upon anyone, regardless of education or training. However, Business & Professions Code §§ 6450 *et. seq.* now requires paralegals to possess either a certificate of completion or degree from an ABA-approved paralegal program or other accredited program requiring at least 24 semester units of law related courses, or a bachelor's or other advanced degree; and a minimum of one year of law-related work experience under the supervision of a California attorney. The law also has a grandfathering provision for those with a high school diploma and at least three years of law-related work experience if that training was completed on or before December 31, 2003. Section §6450(d) requires paralegals to obtain mandatory continuing legal education[7] and to certify completion thereof.[8] When looking for a successful candidate, make sure that the paralegal has completed the requisite education under the Code and that he or she is current on MCLE.[9]

When hiring a paralegal, one thing to learn about is the paralegal schools in your area and their respective reputations. Another positive qualification in a paralegal candidate is a voluntary certification such as a Certified Legal Assistant or Certified Paralegal designation from the National Association of Legal Assistants, or the California Advanced Specialty designation given by the Commission for Advanced California Paralegal Specialization, Inc.

The *Handbook on Paralegal Utilization*, published by the California Alliance of Paralegal Associations, recommends the following steps in hiring a qualified paralegal:

1. Determine the Area of Practice and the Needs of the Attorney

- Will the position be full or part-time?
- Will the position be for a permanent employee or can the services of a freelance paralegal be utilized on a case-needed basis?
- Can the need be met by upgrading the skills of current employees through a paralegal certificate program?
- What skills, experience, and education are required?

2. Develop a Profile of the Perfect Paralegal Candidate

- Is a strong, non-legal background in a related field required (i.e. real estate, medical, water rights, etc.)?
- Is a bilingual paralegal required?

The *Handbook* goes on to list the key characteristics of a successful paralegal as professional (i.e., dress, poise, presentation), above-average intelligence, able to think logically, possessing a high level of writing ability, able and willing to communicate, able to assume

responsibility and work independently with minimal guidance, possessing excellent organization skills and attention to detail, having an understanding of ethical and confidentiality requirements, possessing self-confidence and a positive attitude and taking personal pride in upgrading skills and knowledge.[10]

B. Compliance with Business & Professions Code

It is important to understand from the outset that in-house city attorneys and contract city attorneys who elect to employ and utilize paralegals are subject to Business & Professions Code §6450. The Act contains an exemption for state-employed paralegals which has been misunderstood by some to be a government or public law office exemption. This is not the case: "[W]hile state-employed paralegals are expressly exempted from the new paralegal requirements (Bus. & Prof. Code §6456), local government-employed paralegals are not. This means that city attorneys now have specific supervisory obligations over their paralegals that are required by statute."[11] The duty to comply with §6450 generally involves minimum qualifications required of paralegals, the mandatory continuing education requirement, and the attorney supervisory obligations.

CONCLUSION

The paralegal's primary skill sets of gathering and assembling facts, researching legal questions, drafting legal documents, facilitating communication between the attorney and client, and document and information management are ones which apply at least as well, if not better, to the public law office than to its private and corporate counterparts. If well and creatively used, paralegals can increase both the efficiency and effectiveness with which legal services are delivered to the municipal client. However, just as clients still look to individual lawyers for professional excellence, judgment and accountability, so the success and benefit realized through use of paralegals rests on the successful integration of the paralegal as a member of the city attorney's team and, ultimately, on the trust and confidence that the paralegal has earned from his or her supervising attorney.[12]

ENDNOTES

1. The American Bar Association (ABA) defines paralegal as " a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible." [Adopted by ABA House of Delegates, August 1997].
2. *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989)
3. Katherine A. Currier and Thomas E. Eimermann, *Introduction to Law for Paralegals*, Second Edition, Aspen Law and Business, 2001.
4. For example, then Sacramento City Attorney Samuel L. Jackson in his 1997 "City Attorney's Report to the City Council," reported that two permanent paralegal positions and one permanent investigator position were added to the City's Litigation Section. This resulted, said the City Attorney, "in freeing up attorney time to devote to more substantive litigation matters, while at the same time adding $3.00 per hour to the effective in-house hourly attorney rate." Mr. Jackson's report goes on to discuss that the paralegals perform a variety of support functions, including preparation of routine pleadings and motions, preparing and responding to discovery requests, and reviewing and summarizing discovery responses and documents and notes that many of these functions would have been handled by the attorneys themselves, or assigned to outside counsel at substantially higher effective rate. A copy of Report is on file with authors.
5. Mona Krane (1997), "Methods for Increasing Efficiency Using Paralegals," presentation and paper at League of California Cities, City Attorney Department, Spring Meeting May 7-9, 1997, paper on file with authors and available from the League of California Cities.
6. Statements appearing in quotations or attributed in this article to individual attorneys and paralegals are derived from telephone and in-person interviews conducted by the authors, between January, 2005 and April, 2005; the notes of those interviews are on file with the authors.
7. The current statutory requirements for MCLE are four hours every two years in general law or in a specialized area of law, and four hours every three years in legal ethics. B&P §6450(d). Recently, paralegal MCLE programs, which must meet the same State Bar requirements as MCLE for attorneys, have begun to have more courses relevant to a paralegal in a municipal practice, for example on the Public Record Act.
8. For more information, see "A New Day for State's Paralegals" by David M.M. Bell, *California Bar Journal*, February 2001.
9. Aside from the issue of compliance with Business & Professions Code §§6450, there may be important collateral reasons to be compliant: for example, on a claim or suit by the City in which it is entitled by contract or statute to recover its attorneys' fees, a city may not be entitled to recover fees for paralegal services unless the paralegal meets the educational or experiential requirements of §6450 and at the time the services were rendered met the continuing education requirement of the statute.
10. *Handbook on Paralegal Utilization*, California Alliance of Paralegal Associations, July 2004.
11. Daniel M.M. Bell, "Current Ethics Issues," presentation and paper at League of California Cities, City Attorney Department, Spring Meeting May 4, 2001, paper on file with authors and available from the League of California Cities.
12. The authors wish to acknowledge and thank their many colleagues both in in-house public law offices and in private firms specializing in the representing of public entities who shared their experiences and recommendations respecting paralegal utilization in the municipal law context with the authors. While the authors take full responsibility for all opinions expressed herein, the authors would particularly like to thank Greg Priamos, Riverside City Attorney, Gary Gillig, Oxnard City Attorney, Michelle Beal Bagneris, Pasadena City Attorney, Michael Slater, Assistant City Attorney of Fresno, Michael Colantuono, Colantuono & Levin, Delaina Finch, paralegal Oxnard City Attorney Office, Lynn Sleeper, paralegal in redevelopment section at McDonough, Holland & Allen, and Mona Krane, paralegal at Richards, Watson & Gershon for sharing their time, experiences, and insights with us.

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A Message from the Chair

By William R. Seligmann, Esq.

As this issue of the Public Law Journal goes to publication, the Executive Committee of the Public Law Section has been busily preparing for the Public Lawyer of the Year Award, to be presented on September 9, 2005 at the State Bar Convention in San Diego. This award is present each year to a lawyer who exemplifies the best in our profession through their outstanding service to the public.

At the awards ceremony, the Chief Justice of the California Supreme Court, Ronald George, will present the Public Lawyer of the Year Award to the deserving recipient. Attendance at this ceremony is free to everyone thanks to the generous contributions from the event's sponsors. So I hope to see all of you there to honor our Public Lawyer of the Year.

In addition to the Public Lawyer of the Year Award, the Public Law Section will be presenting nine programs of interest to public lawyers at the Annual Meeting. These programs include: *Bias and the Legal Profession*; *Access to State & Local Government Records*; *Government Agency Use of Religious Symbols and References*; *Local Government Agency Open Meeting Law (Brown Act)*; *Anti-SLAPP Statute Use & Abuse*; *Campaigning for Elected Judicial Office - Election & Campaign Finance Laws*; *Public Official Conflicts of Interest (Govt. Code § 1090)*; *The USA Patriot Act: Four Years of U.S. History Created*; and *California Tort Claims Act and Governmental Immunities*. For more information check out the Public Law Section's web pages on the State Bar Web Site.

As always, I trust that you will find this issue of the Public Law Journal interesting and useful; and I look forward to seeing as many of you as possible at the Public Lawyer of the Year ceremony.

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